

MEMORANDUM OF LAW

DATE: December 12, 1990

TO: Daryl Grigsby, Deputy Director, Water
Utilities Department

FROM: City Attorney

SUBJECT: Lunch Periods for Emergency Crews

In a memo dated October 16, 1990, you asked for an opinion concerning the appropriate way to handle instances when employees, due to emergency conditions, are not able to take a half-hour lunch period during an eight (8) hour shift as required by the Fair Labor Standards Act (FLSA).

The FLSA has been applicable to governmental entities since the *Garcia v. San Antonio Metro.*, 83 L.Ed.2d 1016, 105 S.Ct. 1005 (1985) decision. Additionally, California has its own specific statutes overseeing the working hours of employees. These statutes are found in California Labor Code section 510 et seq. To the extent that state statutes are not inconsistent with the FLSA, they are not superseded by it. *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123 Etc.*, 137 F.2d 176 (1943). The answer to your query is found in California Labor Code section 554. It reads in pertinent part: "This chapter shall not apply to any cases of emergency." In the situation you describe, when emergency crews must work straight through an eight (8) hour shift without a lunch break due to the nature of the repairs, it is not necessary to provide a lunch break. However, they must be paid for a full eight (8) hour shift without deduction for a meal period. Should the lack of a thirty minute break cause an additional thirty minutes to accrue to an employees usual eight (8) hour shift, it must be compensated at the time and one half rate.

If you have any further questions, please feel free to call me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:300(x043.2)

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